UNITED STATES DISTRICT COURT DISTRICT OF MINNESOTA SECOND DIVISION	
LowtherBrothers, LLC, Plaintiff, vs. Century Roofing, Sam Mitchell, Nick Mitchell, John Doe and Mary Roe, Defendants.	Case Type 370 Other Fraud Court File No. ____________ **COMPLAINT**

COMMON ALLEGATIONS

1. Plaintiff, LowtherBrothers[1], LLC (referred to herein as "LowtherBrothers") is a Minnesota limited liability company with its principal place of business located at 1315 North 7th Street, Lake City, Minnesota 55041. For the past fifteen years, LowtherBrothers has been engaged in the business of owning and managing real estate. Presently, LowtherBrothers owns two strip malls and an office building in Wisconsin and a strip mall in West Virginia.

2. Defendant Century Roofing (referred to herein as "Century"), through its agent Sam Mitchell, is alleged to be engaged in the commercial roofing business. It has no office or other principal place of doing business in Minnesota. On information and belief, Century Roofing is a citizen of a state other than Minnesota.

3. Defendant Sam Mitchell represented himself to LowtherBrothers as the owner of Century. Upon information and belief, at the times set forth in this Complaint, Sam Mitchell resided at 925 Little East Neck Road, West Babylon, New York 11704.

4. Defendant Nick Mitchell represented himself to LowtherBrothers as the co-owner of Century and the son of Sam Mitchell. Upon information and belief, at the times set forth in this Complaint, Nick Mitchell resided at 1704 69th Street, Apt.1, North Bergen, New Jersey 07047.

5. Defendants John Doe and Mary Roe represent the yet to be identified accomplices of Sam Mitchell, Nick Mitchell and Century.

[1] LowtherBrothers is spelled as one word exactly as set forth herein.

JURISDICTION & VENUE

6. This court has jurisdiction pursuant to 28 U.S.C. § 1332 as this dispute is between citizens of different states and the amount in controversy exceeds $ 75,000, exclusive of interests and costs.

7. Venue is appropriate in this judicial district pursuant to 28 U.S.C. § 1391 because a substantial part of the events giving rise to Plaintiff's claims occurred in this district.

STATEMENT OF FACTS

8. In late June or early July, 2010, LowtherBrothers received an advertisement by fax at its place of business from Century offering roofing services.

9. On July 13, 2010, following several telephone and in person conversations with Century, LowtherBrothers met with Sam and Nick Mitchell at the Downtowner Woodfire Grill in St. Paul, Minnesota, at which time LowtherBrothers entered into a contract ("Contract") with Century to repair the roof on LowtherBrothers' strip mall in Buckhannon, WV, known as Skyline Plaza (referred to herein as "Skyline"). Century agreed the following tasks would be performed on the 41,250 sq ft roof for $80,000:

A. Clean and sweep roof and remove dirt and debris from entire roof.
B. Reseal all open seams and pipes with EPDM membrane to bond and seal.
C. Reseal all drains with EPDM rubber.
D. Build up low areas for proper drainage. Cut out all bad areas and replace with EDPM rubber to bond and seal.
E. Insulation will be checked and replaced where necessary.
F. Check gutters, repair and/or replace where needed and secure at no additional cost.
G. Will cut out all blisters and reseal with EPDM rubber.
H. Install moisture ventilators to remove excess moisture if needed.
I. EPDM Rubber System will be machine applied on entire roof.
J. New flashings will be installed where needed and/or will be sealed and recoated with EPDM rubber to bond and seal and stop all water penetrations.

The Contract carries a 10-year guarantee. The Contract is attached hereto as Exhibit 1.

10. Century provided a Certificate of Insurance to LowtherBrothers attached as Exhibit 2.

11. On July 14, 2010, LowtherBrothers paid Century a $20,000 advance. Check #114 is attached hereto as Exhibit 3. Also displayed on Exhibit 3 is the back of check #114, which shows that the check was endorsed by Century and cashed at Nova Savings Bank located at 1235 West Lakes Drive, Suite 420, Berwyn, Pennsylvania 19312.

12. Century sent a crew, including Sam Mitchell and Nick Mitchell, from Minneapolis to Skyline and worked on the roof July 15 through July 21, 2010. LowtherBrothers visited the site, reviewed progress on the work, and, at the insistence of Sam Mitchell and Nick Mitchell, paid the remaining $60,000 to Century on July 20, 2010, on their promise that all work would be completed pursuant to the Contract before they left.

13. The funds were paid by two Cashiers Checks, each for $30,000. Check # 4588326, which is attached hereto as Exhibit 4, was endorsed by Century and deposited at Nova Savings Bank. Check # 4588327, which is attached hereto as Exhibit 5, was endorsed by Century and Sam Mitchell and deposited at Bethex Federal Credit Union located at 20 East 179th Street, Bronx, New York 10453.

14. LowtherBrothers has learned that Century's Certificate of Insurance is fraudulent.

15. LowtherBrothers also did a trace on the 866 number on the advertising fax from Century and discovered that it came from Nick Mitchell's address at 1704 69th Street, Apt.1, North Bergen, New Jersey 07047.

16. Century did not complete the work required by the Contract. Roof leaks continued in all tenant and vacant suites at Skyline after Century's departure and continue to this day. LowtherBrothers has made repeated attempts to contact Century, Sam Mitchell and Nick Mitchell to make repairs. Century has failed to complete its work according to the Contract and has refused to stand by its 10 year guarantee as promised in the Contract. After inspection of the Skyline roof by several roofing contractor professionals, LowtherBrothers has learned that the work performed by Century was incomplete, faulty and actually did more harm than good, including without limitation, that Century incorrectly used a petroleum based spray coating for the roof sealant, which has the adverse effect of accelerating the deterioration of the roof membrane.

COUNT ONE (INTENTIONAL FRAUD)

17. LowtherBrothers restates and realleges the allegations contained in paragraphs 1 through 16 above.

18. On July 13, 2010, and at meetings both prior and subsequent to that date, Defendants, through their agents, specifically represented that:

A. they would effectively perform all services promised pursuant to the Contract; and

B. their work was guaranteed for 10 years.

19. LowtherBrothers entered into the Contract in reliance on each of the above representations.

20. In fact, each of the above representations was false in that:

A. Century did not effectively perform all services promised pursuant to the Contract, and their work did more harm than good to the roof on Skyline; and

B. Century failed to deliver upon the 10 year guarantee.

21. Said representations were made by Defendants knowing that they were false or with insufficient information upon which to make them or without exercising reasonable care.

22. Defendants intended that LowtherBrothers be induced to act upon their representations and LowtherBrothers was so induced to act by entering into the Contract and paying $80,000 to Defendants.

23. As a direct and proximate result of said false representations, LowtherBrothers has suffered damages in an amount in excess of $75,000.

COUNT TWO (FALSE ADVERTISING)

24. LowtherBrothers restates and realleges the allegations contained in paragraphs 1 through 23 above.

25. Defendants, in an attempt to sell its services to LowtherBrothers and other members of the public, and in an attempt to induce LowtherBrothers and other members of the public to enter into contracts with Defendants for the purchase of such services, made, published, disseminated and circulated to induce

LowtherBrothers and other members of the public, fax offerings in the form of advertisements related to their roofing services.

26. Said advertisements contained material which was untrue, deceptive or misleading in violation of Minn. Stat. § 325F.67.

27. Defendants' actions have directly and proximately caused LowtherBrothers damage in an amount in excess of $75,000, including attorneys fees, pursuant to Minn. Stat. § 8.31, Subd.3 (a).

COUNT THREE (DECEPTIVE TRADE PRACTICES)

28. LowtherBrothers restates and realleges the allegations contained in paragraphs 1 through 27 above.

29. Defendants engaged in deceptive trade practices by representing that their roofing services had characteristics, uses and benefits that they did not have in violation of Minn. Stat. § 325D.13.

30. Defendants' deceptive trade practices directly and proximately caused LowtherBrothers damage in an amount in excess of $75,000, including attorneys fees, pursuant to Minn. Stat. § 8.31, Subd.3 (a).

WHEREFORE, Plaintiff prays for relief from this Court as follows:

1. Judgment for Plaintiff and against Defendants for compensatory and consequential damages in excess of $75,000;

2. For attachment as specified in the pleadings attached;

3. For costs, disbursements and attorneys fees herein; and

4. Such other relief as the Court may find just and equitable.

Dated: 1.21.11

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ATTORNEY FOR PLAINTIFF